Watkins Contracting, Inc. and Laborers International Asbestos and Toxic Abatement Employees Union, Local 882, AFL–CIO, a/w Laborers International Union of North America, AFL–CIO. Case 21–CA–33379

August 27, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

On March 23, 2001, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision* and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Watkins Contracting, Inc., San Diego, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to bargain with Laborers International Asbestos and Toxic Abatement Employees Union, Local 882, AFL–CIO, affiliated with Laborers International Union of North America, AFL–CIO, by refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees."

2. Substitute the following for paragraph 2(a).

"(a) Furnish to the Union in a timely fashion the information requested by the Union in items 1 and 2 of its letter dated March 23, 1999, excluding social security numbers and limited to bargaining unit employees."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. August 27, 2001

Peter J. Hurtgen, Chairman

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

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* Our review of the judge's decision disclosed some inadvertent errors, which we correct here. In par. 1, the filing date of the original charge was June 16, not June 15. In sec. II, B, 1, par. 1, the date of issuance of *Graphics Communications Local 13 v. NLRB* was 1979, not 1959. In par. 3 of the same section, where the judge writes of "making this determination of importance," the word "importance" should be changed to "relevance."

[1] We adopt the judge's conclusion that the Respondent unlawfully refused to furnish the information requested by the Union on March 23, 1999. In the proceedings below, the Respondent contended it had no duty to furnish the requested information because, *inter alia*, it had provided similar information to the Union in July 1998. The March 23 request was essentially a request for an update, and the Respondent did not reply. Thus, the judge properly rejected the Respondent's contention in reliance on *Long Island Day Care Services*, 303 NLRB 112 (1991). However, the judge also treated the contention as though the Respondent were disputing the information's relevance. The Respondent has not done so. On the contrary, in its exceptions the Respondent admits the relevance of the requested information as it pertains to bargaining unit employees. Since there is no contention that the information is not relevant, we do not pass on the judge's discussion of what is required to rebut the presumption of relevance.

There were no exceptions to sec. II, B, 3, c of the judge's decision concerning the availability of the requested information from other sources, or to sec. II, B, 3, e concerning the Respondent's confidentiality claim. With respect to the latter, however, we note that in the last paragraph of sec. II, B, 3, e, the judge inadvertently refers to *Minnesota Mining & Mfg. Co.*, 261 NLRB 27 (1982), instead of the decision the judge actually quotes from and discusses, *Exxon Co. USA*, 321 NLRB 896 (1996).

[2] The Respondent argues, *inter alia*, that the judge's recommended Order is overly broad in certain respects. We agree and have modified the recommended Order to remedy more precisely the violation found by the judge.

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with Laborers International Asbestos and Toxic Abatement Employees Union, Local 882, AFL–CIO, affiliated with Laborers International Union of North America, AFL–CIO, by refusing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish to the Union in a timely fashion the information requested by the Union in items 1 and 2 of its letter dated March 23, 1999, excluding social security numbers and limited to bargaining unit employees.

WATKINS CONTRACTING, INC.

Jean C. Libby, for the General Counsel.
Carlos R. Perez (Reich, Adell, Crost, & Cvitan), Los Angeles, California, for the Charging Party.
Mark T. Bennett (Merrill, Schultz, & Wolds, LTD), San Diego, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at San Diego, California, on August 29, 2000. On June 15, 1999, Laborers International Asbestos and Toxic Abatement Employees Union, Local 882, AFL–CIO, affiliated with Laborers International Union of North America, AFL–CIO (the Union) filed the original charge alleging that Watkins Contracting, Inc. (Respondent or the Employer) committed certain violations of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended. On January 31, 2000, the Regional Director for Region 21 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent alleging that Respondent violated Section 8(a)(1) and (5) of the Act. The complaint was amended at the hearing. Respondent filed timely answers to the complaints denying all wrongdoing.

The essential issue is whether the Respondent's failure and refusal to provide the Union with the requested information of a list of current employees containing the names, addresses, job classifications, rate of pay, telephone numbers if any, and present job locations including site addresses is a violation of Section 8(a)(1) and (5) of the Act.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs.[1] On the entire record, from my observation of the demeanor of the witnesses[2] and having considered the post-hearing briefs of the parties, I make the following.

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent, a Nevada corporation, is engaged in the asbestos-lead handling business, at its facility in San Diego, California, where it annually purchases and receives at its California locations goods valued in excess of $50,000 directly from suppliers located outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent admits and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background and Issues

The Union and the International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 5, AFL–CIO, were jointly certified as exclusive collective-bargaining representatives for hazardous material handler mechanics and hazardous material handler helpers employed out of Respondent's San Diego facility on May 27, 1997. Collective-bargaining negotiations began in the summer of 1997. The Union requested information at the last bargaining session, July 9, 1998, which included a request for a list of the employees including their names, social security numbers, addresses, telephone numbers, and present job locations.

Humberto Gomez, business manager of the Union, testified that the information was requested for the purposes of negotiations, identifying employees, and to compare the jobsite information with the information the Employer provide to Cal-OSHA. Respondent asked that the request be put in writing which was done on July 14, 1998, and the Respondent provided the information on July 23, 1998. In the same month, the parties reached impasse and the Respondent notified the Union of its intent to implement its last, best, and final offer.

By letter dated March 23, 1999, the Union requested information "pertaining to negotiations." The Union requested, among other things, a list of the current employees with their addresses, job classifications, rate of pay, telephone numbers, if any, and a list of present job locations including site addresses. In a letter dated April 2, 1999, Respondent stated that since the parties were at impasse, Respondent was under no obligation to continue negotiations with the Union until another proposal was submitted by the Union. The letter further stated that the request for employee names, addresses, job classifications, rate of pay, and telephone numbers had already been provided in

[1] The General Counsel, Charging Party, and Respondent all filed timely briefs.

[2] The credibility resolutions here have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings therein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

July 1998. In regards to the present job locations, Respondent asked for an "explanation of the relevance of that information in the current context of the collective bargaining relationship" and if the information was shown to be "relevant," a question was posed as to whether the "union was prepared to enter into a legally binding and enforceable confidentiality agreement pertaining to such information, should the company choose to provide it."

By letter dated April 14, 1999, the Union made a second request for the information. By letter dated April 22, 1999, Respondent re-directed the Union to its letter of April 2, 1999. The Union responded with a third request, by letter, for the information on April 22, 1999. During the March/April exchanges, the Union did not receive the information it requested of the Respondent pertaining to a list of the current employees with their addresses, job classifications, rate of pay, telephone numbers, if any, and a list of present job locations including site addresses.

B. Discussion and Findings

1. The duty to furnish information

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees, subject to the bargaining unit provisions of Section 9(a). The duty to bargain in good faith requires an employer to furnish information requested and needed by the employees' bargaining representative for the proper performance of its duties to represent unit employees of that employer. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). A union's request for information regarding the terms and conditions of employment of the employees employed within the bargaining unit represented by the union, is "presumptively relevant" to the Union's proper performance of its collective-bargaining duties, *Samaritan Medical Center*, 319 NLRB 392, 397 (1995), because such information is at the "core of the employee-employer relationship," *Graphics Communications Local 13 v. NLRB*, 598 F.2d 267, 271 fn. 5 (D.C. Cir. 1979), thus it is relevant by its "very nature." *Emeryville Research Center v. NLRB*, 441 F.2d 880, 887 (9th Cir. 1971).

Therefore, an employer's statutory obligation to provide information presupposes that the information is relevant and necessary to a union's bargaining obligation vis-a-vis its representation of unit employees of that employer. *White-Westinghouse Corp.*, 259 NLRB 220 fn. 1 (1981). Whether the requested information is relevant and sufficiently important or needed to invoke a statutory obligation to provide it is determined on a case-by-case basis. *Id.*

In making this determination of importance, the Board has followed the following principles:

> Wage and related information pertaining to employees in the bargaining unit is presumptively relevant, for, as such data concerns the core of the employer-employee relationship, a union is not required to show the precise relevance of it, unless effective employer rebuttal comes forth; as to other requested data, however, such as employer profits and production figures, a union must, by reference to the circumstances of the case, as an initial matter, demonstrate more precisely the relevance of the data it desires.

Coca-Cola Bottling Co., 311 NLRB 424, 425 (1993) (citing *Curtiss-Wright Corp. v. NLRB*, 347 F.2d 61, 69 (3d Cir. 1965)).

> Thus, if the requested information goes to the core of the employer-employee relationship, and the employer refuses to provide that requested information, the employer has the burden to prove either lack of relevance or to provide adequate reasons why it cannot, in good faith, supply the information. If the information requested is shown to be irrelevant to any legitimate union collective-bargaining need, however, a refusal to furnish it is not an unfair labor practice.

Coca-Cola Bottling Co., supra at 425 (citing *Emeryville Research Center v. NLRB*, supra)

The standard to determine a union's right to information will be "a broad discovery type standard," which permits the union access to a broad scope of information potentially useful for the purpose of effectuating the bargaining process. *NLRB v. Acme Industrial*, supra at 437, fn. 6; *See Also Anthony Motor Co., Inc.*, 314 NLRB 443, 449 (1994). There only needs to be "the probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Acme Industrial*, supra at 437.

2. The relevance of the information requested

In this case, all of the information in question, employee names, addresses, job classifications, rate of pay, telephone numbers, and present job location including site addresses is presumptively relevant. As such, no showing of particular need is necessary. *Curtiss-Wright Corp.*, supra at 69.

As to employee job classification, it is a condition of employment that is presumptively relevant information. *Millard Processing Services, Inc.*, 308 NLRB 929, 930 (1992). The same is true for rates of pay. *Dynatron/Bondo Corp.*, 305 NLRB 574 (1991); see also *TEG/LVI Environmental Services, Inc.*, 328 NLRB No. 69, slip op. pp. 1–2 (1999); *Children's Hospital of San Francisco*, 312 NLRB 920 (1993).

As to names, addresses, and telephone numbers, "[t]he Union's obligation to represent employees presupposes the ability to communicate with them." *Howe K. Sipes Co.*, 319 NLRB 30, 39 (1995). It is well settled that the names, addresses, and telephone numbers are therefore presumptively relevant information. *Dynatron/Bondo Corp.*, supra at 574; *Valley Programs*, 300 NLRB 423, (1990); see, e.g., *Burkart Foam*, 283 NLRB 351 (1987), enfd. 848 F.2d 825 (7th Cir. 1988); *Tom's Ford*, 253 NLRB 888, 894–895 (1980).

As to the present job location including site addresses, the Board has found that a "[l]ist of current employees containing the names, addresses, job classifications, rates of pay and telephone numbers if any" and a "[l]ist of present job locations including site addresses" was presumptively relevant information "inasmuch as the request relates to wages, hours, and terms and conditions of employment of the unit employees. The Respondent's denial of its relevance, without more, does not raise an issue warranting a hearing." *TEG/LVI Environmental Services, Inc.*, 328 NLRB No. 69, slip op. pp. 1–2 (1999).

3. Respondent's arguments

a. Information previously provided

Respondent raises several arguments against providing the information. Respondent argues that it has not failed nor refused to provide the information but rather has already complied with the March 1999 request for information by providing answers to these same questions in July 1998.

With presumptively relevant information, "a union is not required to prove the precise relevance of such information unless the Respondent submits evidence sufficient to rebut the presumption of relevance." *Mathews Readymix, Inc.*, 324 NLRB 1005, 1009 (1997), (citing *Grand Islander Health Care Center*, 256 NLRB 1255, 1256 (1981)).

In this case, Respondent has not clearly and convincingly rebutted the presumption of relevance. While Respondent has stated that it provided answers to the same questions in July 1998, it has not stated that the answers to those questions were the same as those that would have been provided in March 1999. Rather, the General Counsel's witness, Mr. Gomez, testified that the number of asbestos and toxic abatement employees in the bargaining unit in 1999 varied from 75–150. And, as evidenced by the lengthy time spent at hearing over where jobsite information could be found, the employees perform their work in varying locations.

Therefore, in examining the circumstances particular to this case I find that it is not unreasonable for a union to request updated information from time to time. *Long Island Day Care Services*, 303 NLRB 112, 130 (1991). In *Long Island Day Care Services*, as here, the information requested (names, addresses, job classifications, dates of hire, and wage rates) was provided and then again requested by the Union 8 months later. It is reasonable to assume that there was employee turnover, changes in address, phones numbers, and job classifications. *Id.* at 130, fn 8. Additionally, with the nature of the work performed by the bargaining unit employees in the present case (i.e., performance at different job locations with different site addresses), it is not unreasonable to assume that the present job locations including site address has additionally changed in the last 8 months.

Having the number of employees in the bargaining unit change between 75 to 150 in 1 year within a business that additionally has changes in jobsite information makes this a situation where everyone ought to know, by reason of obviousness, that the answers to the questions are not stable and it is not unreasonable to request the information again, in this case 8 months later, as the information remains presumptively relevant. Therefore, although Respondent has stated that it supplied answers to the same questions 8 months earlier, this is not a significant rebuttal of the presumption of relevance under the circumstances of this particular case.

b. The parties were at impasse

In its letter to the Union dated April 2, 1999, the Respondent questioned the relevancy of requesting information on current job locations including site addresses given that the parties were at impasse. Respondent further argued that it had no obligation to provide the information under these circumstances.

It is well settled that an employer has an obligation to furnish a union, on request, information necessary to enable the union to perform its duties as collective-bargaining representative of unit employees. *NLRB v. Acme Industrial Co.*, supra at 435–436 (1967). In addressing a union's request for information after impasse, the Board found that impasse did not serve to terminate altogether the bargaining relationship between the union and the respondent. Although an impasse means that "the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless," *Laborers Health & Welfare Trust v. Advanced Lightweight Concrete*, 779 F.2d 497, 500 fn. 3 (9th Cir. 1985), quoted with approval *Laborers Health & Welfare Trust v. Advanced Lightweight Concrete*, 484 U.S. 539, 543 fn. 5 (1988), an impasse is nonetheless viewed as "only a temporary deadlock or hiatus" in bargaining for a collective-bargaining contract, *Charles D. Bonanno Linen Service v. NLRB*, 454 U.S. 404, 412 (1982), during which "there [is] no realistic possibility that continuation of discussion at that time would have been fruitful." *Television Artists AFTRA v. NLRB*, 395 F.2d 622, 628 (D.C. Cir. 1968).

> The bargaining process, itself, contemplates that passage of time following such a hiatus will lead one or the other party to modify its positions(s) on deadlocked issues, ibid., and, once that occurs, all parties are obliged to resume negotiations in a renewed effort to reach agreement on terms for a collective-bargaining contract. Accordingly, ... impasse . . . . served only to interrupt the ongoing process of bargaining for a contract; it did not serve to interrupt or suspend the Union's status as the statutory bargaining agent of employees in the historic bargaining unit.
>
> As a general proposition, during such a hiatus in negotiations for a contract, an employer's duty to disclose relevant information is no different, and certainly no less, than exists before impasse. For, "wage and related information pertaining to employees in the bargaining unit should, upon request, be made available to the bargaining agent without regard to its immediate relationship to the negotiation or admin istration of the collective- bargaining agreement," *Whitin Machine Works*, 108 NLRB 1537, 1541 (1954), enfd. 217 F.2d 593 (4th Cir. 1954), since "a labor organization's right to relevant information is not dependent upon the existence of some particular controversy or the need to dispose of some recognized problem." (Citations omitted) *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 361 (D.C. Cir. 1983). *Retlaw Broadcasting Co.*, 324 NLRB 138, 141–142 (1997) (citing *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 361 (D.C. Cir. 1983))

Therefore, Respondent cannot justify its refusal to provide the presumptively relevant information to the Union simply because the request was made after impasse. Respondent remains under a duty to provide this information.

c. The information requested is available elsewhere

Respondent raised as an affirmative defense that "[s]ome or all of the information allegedly requested by Local 882 was available to the Union."

The fact that the Union may obtain information by other means or from another source does not alter or diminish the obligation of the Employer to furnish relevant information. *Holyoke Water Power Co.*, 273 NLRB 1369 (1985); *Armstrong World Industries, Inc.*, 254 NLRB 1239, 1243 (1981). "For it is clear that Sec. 8(a)(5) imposes on an employer the duty to furnish a union with information relevant to the union's intelligent performance of its representative function." *Armstrong World Industries, Inc.*, supra at 1243.

d. Information going to be used for other purposes

Respondent argues that the reason the Union is requesting the jobsite information has nothing to do with Respondent's duty to bargain. Respondent argues that the request for information in July 1998, was for the purposes of comparing that information to the information Respondent provided to Cal-OSHA.

Although Gomez testified that the Union, in its July 1998 request, orally stated that jobsite information was for the purposes of comparing it to the jobsite information Respondent provided to Cal-OSHA, the Respondent ignores the fact that the Union additionally stated, at hearing and in its letter requesting the information, that the information was for negotiations and identifying employees. Additionally, jobsite location including site addresses is presumptively relevant information for which the Union does not have to demonstrate "the precise relevance." *Curtiss-Wright*, supra at 69. Further, "it is well established that, where a union's request for information is for a proper and legitimate purpose, it cannot make any difference that there may be other reasons for the request or that the data may be put to other uses." *Associated General Contractors of California*, 242 NLRB 891, 894 (1979). And when the information requested is presumptively relevant, "[I]t is well settled that the presumption of relevance is not rebutted by a showing that the union also seeks the information for a purpose unrelated to its representative function." *Coca-Cola Bottling Co.*, supra at 429.

Therefore, even if the Union were going to use the jobsite information to compare to Cal-OSHA reports, it cannot make a difference, nor can it rebut the presumption of relevance that has been established for this information.

e. Respondent's request for a confidentiality agreement

In its April 2, 1999 letter to the Union, Respondent asked if job location were found to be relevant information while the parties were at impasse, was the Union "prepared to enter into a legally binding and enforceable confidentiality agreement pertaining to such information." Respondent argues that the "terms under which information will be provided is a legitimate subject of bargaining" and cites *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 32 (1982).

Once the initial showing of relevance has been made, "the employer has the burden to prove a lack of relevance ... or to provide adequate reasons as to why he cannot, in good faith, supply such information." *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977). "[T]he Board is required to balance a union's need for the information against any legitimate and substantial confidentiality interest established by the employer." *Earthgrains Baking Companies, Inc.*, 327 NLRB No. 115 (1999), slip op. pp. 11–13; *see, e.g., Exxon Co. USA*, 321 NLRB 896 (1996); *Good Life Beverage Co.*, 312 NLRB 1060 (1993). "However, it is also well settled that as a part of this balancing process, the party making a claim of confidentiality has the burden of proving that such interests are in fact present and of such significance as to outweigh the union's need for the information." *Jacksonville Area Assn. for Retarded Citizens*, 316 NLRB 338, 340 (1995). "Where the employer fails to demonstrate a legitimate and substantial confidentiality interest, the union's right to the information is effectively unchallenged, and the employer is under a duty to furnish the information." *A-Plus Roofing*, 295 NLRB 967, 970 (1989).

In this case, Respondent has only stated that the information should be held confidential and then asked if the Union would agree to sign a confidentiality agreement. Respondent has not proven a legitimate and substantial confidentiality interest. Respondent has therefore failed in its burden.

Respondent is correct in citing to *Minnesota Mining and Mfg. Co.*, supra at 32 (1982), as a means to establish that the terms under which information will be provided is a legitimate subject of bargaining. Respondent had requested the "term" of a confidentiality agreement from the Union. In *Minnesota Mining*, the Board ordered the respondent to disclose the confidential information "subject to the parties' bargaining in good faith to a mutually satisfactory confidential agreement, protective order, or other appropriate procedure." 321 NLRB at 899. *Minnesota Mining* is distinguished from the present case in that the employer in *Minnesota Mining* had already established a legitimate confidentiality concern; that the identity of persons who have disclosed prior drug or alcohol related arrests or convictions and have participated in a structured rehabilitation program is highly sensitive information and requires consent to release the information from the employees. In the instant case, Respondent has merely stated that the information is confidential without explanation. As such, *Lasher Service Corp.*, 332 NLRB No. 71, slip op. p. 1 (2000), is controlling. In *Lasher*, the Board ordered the respondent to supply the requested information and disallowed an order affording the respondent 30 days to bargain with the union for a confidentiality agreement because the respondent had not met its burden of establishing that the information was indeed confidential. *Id.* As the same is true in the present case, (i.e., Respondent has not met its burden of establishing that the information was confidential) Respondent should provide the relevant information.

f. Request for information was overbroad

The Respondent argues in its brief that the union's request for this information was overbroad. Respondent argues that the terms of the request includes non-bargaining unit employees as well as bargaining unit employees. The March 23, 1999 letter requesting the information indicates that the Union requested a "List of employees. . . ." without specifying which employees.

Although it seems clear by context that the Union was requesting information about the employees it represented, when a union seeks information concerning employees outside of the represented bargaining unit, there is no presumption of relevance and the Union has the burden, in that instance, to show

relevance. *E. I. Du Pont & Co.*, 744 F.2d 536, 538 (6th Cir. 1984). The Board held in *Keauhou Beach Hotel* that:

> Even if the Union's request was ambiguous and/or intended to include information regarding nonunit employees when made, this would not excuse the Respondent's blanket refusal to comply. It is well established that an employer may not simply refuse to comply with an ambiguous and/or overbroad information request, but must request clarification and/or comply with the request to the extent it encompasses necessary and relevant information. 298 NLRB 702 (1990); *See, e.g., Earthgrains Baking Companies, Inc.*, 327 NLRB No. 115, slip op. p. 16 (1999); *Tire America, Inc.*, 315 NLRB 197, 198 (1994).

I believe that Respondent knew that the union's request applied to bargaining unit employees and did not seek information regarding non-bargaining unit employees. Even if Respondent believed the union's request for information was overbroad, it was obliged to provide information about the bargaining unit employees; the information that was not overbroad or irrelevant.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of the Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with information consisting of a list of current employees, their addresses, job classifications, rate of pay, telephone numbers, if any, and a list of present job locations including site addresses.

4. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent provide the Union with the requested information including a list of current employees, their addresses, job classifications, rates of pay, telephone numbers, if any, and a list of present job locations including site addresses.

On the foregoing findings of fact and conclusions of law, and on the entire record, and pursuant to Section 10(c) of the Act, I hereby make the following recommended.[3]

ORDER

Respondent, Watkins Contracting Co., its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Refusing to bargain with, Laborers International Asbestos and Toxic Abatement Employees Union, Local 882, AFL–CIO, affiliated with Laborers International Union of North America, AFL–CIO (the Union) by refusing to provide the Union with requested information including a list of current employees, their addresses, job classifications, rates of pay, telephone numbers, if any, and a list of present job locations including site addresses.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, provide the Union with the requested information including a list of current employees, their addresses, job classifications, rates of pay, telephone numbers, if any, and a list of present job locations including site addresses.

(b) Within 14 days after service by the Regional Director, post at its San Diego, California, facilities copies, in English and Spanish, of the attached notice marked "Appendix"[3]. Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced, or covered by other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since April 2, 2000.

(c) Within 21 days after service by the Regional Director, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated at San Francisco, California this 23rd day of March 2001.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had a chance to give evidence, the National Labor Relations Board has found that we violated

[3] All motions inconsistent with this recommended order are hereby denied. In the event that no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, and has ordered us to post this notice.

The National Labor Relations Act gives all employees the following rights.

To organize themselves

To form, join, or support unions

To bargain as a group through representatives of their own choosing

To act together for collective bargaining or other mutual aid or protection

To refrain from any or all such activity.

WE WILL NOT refuse to bargain with, Laborers International Asbestos and Toxic Abatement Employees Union, Local 882, AFL–CIO, affiliated with Laborers International Union of North America, AFL–CIO (the Union) by refusing to provide the Union with requested information including a list of current employees, their addresses, job classifications, rates of pay, telephone numbers, if any, and a list of present job locations including site addresses.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL provide the Union with the requested relevant information including a list of current employees, their addresses, job classifications, rates of pay, telephone numbers, if any, and a list of present job locations including site addresses.